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SIPDIS

STATE FOR OFFICE OF INVESTMENT AFFAIRS - EB/IFD/OIA

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TAGS: KTDB EFIN ECON ETRD EINV PGOV ZI
SUBJECT: INVESTMENT CLIMATE STATEMENT - ZIMBABWE

¶1. The Zimbabwean economy remains very weak, making it unlikely to attract or absorb signficiant foreign direct investment (FDI) in 2005. In recent years, FDI has been less than US$10 million annually, down from US$300-500 million in the mid-1990s. As we note in the more extensive Country Commercial Guide (septel), foreign investors will find few if any sectors appealing at this time. In many industries, wage inflation has made Zimbabwean workers as expensive as those in South Africa. The overvalued official exchange rate diminishes the buying power of foreign investors in Zimbabwe and it renders most of the country's exports uncompetitive. In addition, the country's political crisis has harmed the rule-of-law and put private property at greater risk.

Openness to Foreign Investment

¶2. Zimbabwe is generally unwelcoming to foreign investment, particularly from Western countries. Nonetheless, about 25 U.S. multinationals maintain subsidiaries in the country, largely holdovers from better years in the recent past. Many others, such as Caterpillar and Microsoft, sell their products through licensed dealers. The Government's official and oft-enunciated policy is to favor FDI from Asian countries, particularly from China and Malaysia.

¶3. The Government's guidelines for foreign investors are found in the volume, "The Promotion of Investment: Policy and Regulations," commonly referred to as Zimbabwe's "Investment Code." It has two dominant themes: a) recognizing that foreign capital has played an important role in Zimbabwe's development, but b) stressing that Zimbabweans should participate more fully in the country's economy. Accordingly, it notes that the Government prefers majority Zimbabwean participation in new investment projects and specifies that the degree of local ownership will be a prime criterion in the evaluation of investment proposals. This bias toward local control has grown since ¶2001.

¶4. The Government will consider majority foreign ownership in high-priority projects, but will also encourage arrangements for the eventual transfer of majority control to Zimbabwean interests. It has often been Government practice to take part in new investments by entering into joint ventures with private or domestic investors in strategic and basic infrastructure projects. However, given the Government's cumulative deficit and resultant capital shortage, this type of activity is moribund at present. Regarding privatization of Zimbabwe's parastatal companies, progress has been very slow since the Government identified it as a priority in the mid-1990s, with only about six out of the 57 earmarked organizations making the transition. Moreover, arguments about the allowable extent of foreign investment, retention amount for indigenization, pricing and means of offering have yet to be clearly or transparently resolved.

Conversion and Transfer Policies

¶5. Zimbabwe is currently experiencing an acute hard currency shortage that, among other things, has caused fuel shortages, default on sovereign debt, shortages of imported goods and components, and a sharp decline in industrial, agricultural and mining operations. The Foreign Exchange Control Act does not prohibit foreign investors from moving assets between Zimbabwean and foreign accounts, but it does require accommodation exchange at a fixed, artificially low rate.

¶6. The Foreign Exchange Control Act extends to prospective outward investment, as well as dividend remittances. Relatively few Zimbabwean firms have made investments outside the country, and most of these are in neighboring nations. Traditionally, investment by Zimbabweans outside their country has been something of a sore point with the Government, which suspects, often correctly, that companies may actually be simply relocating from Zimbabwe. A case in point is a number of textile manufacturers who relocated to Botswana a few years ago in order to take advantage of that country's easy access to imports and foreign exchange for the purpose of exporting back into Zimbabwe.

Expropriation and Compensation

¶7. Zimbabwe's constitution prohibits the acquisition of private property without compensation. Nonetheless, the Government has sanctioned land invasions by "war veterans" and other "settlers" since 2001 and the Parliament approved in April 2000 Constitutional Amendment No. 16, which authorized the compulsory acquisition of privately owned commercial farms with compensation limited to the improvements made on the land. Additionally, over the past few years the President and other officials have made periodic statements indicating that the Government may next target the mining sector and/or manufacturing sector for similarly forced indigenization. It remains to be seen what parameters and compensation standards will be followed if this objective is acted upon. Needless to say, any potential foreign investors should take into account the risk of uncompensated expropriation

¶8. Land redistribution has long been recognized as a necessary step to redress colonial injustices, create long-term stability and enhance economic participation by citizens in Zimbabwe. However, the current program fails to achieve these goals. In many instances, prime properties went to ruling party cadres. In other instances, the resettled peasant populations lack the infrastructure, training, skills and resources to utilize the land they have been given. Worse still, virtually no farm laborers, who would have at least had adequate training and skills, have received any land, and there has been neither transparency nor an orderly strategy to maintain production.

¶9. The Government's program to seize largely white-owned commercial farms without either the intention or the funds to compensate the title holders has raised serious questions about respect for property rights and the rule of law in Zimbabwe. Besides the fate of the country's largest export producing sector, Zimbabwe's food self-reliance has fallen dramatically, affecting the entire economy. As part of this program, the Government has seized for redistribution a number of farms and conservancies belonging to American citizens and other foreign investors. Most of these property-owners held Zimbabwe Investment Center approval certificates and purchased their land after Independence in 1980. Despite former repeated U.S. protests, the Government has not addressed these extra-judicial expropriations.

Dispute Settlement

¶10. In the event of an investment dispute (excepting the current fast-track land reform program), the Government of Zimbabwe agrees in theory to submit the matter for settlement by arbitration, according to the rules and procedures promulgated by the United Nations Commission on International Trade Law (UNCITRAL), once the investor has exhausted the administrative and judicial remedies available locally. We are not aware of investors who have resorted to this option.

¶11. To increase investor confidence, the Government has also acceded to the 1965 convention on the settlement of investment disputes between states and nationals of other states, and to the 1958 New York convention on the recognition and enforcement of foreign arbitral awards. Until recently, Zimbabwe's judiciary enjoyed a well-deserved reputation for fairness and independence. However, recent Government efforts to intimidate the judiciary and suspect new appointments to the bench have raised serious concerns in this area. Additionally, during 2002 many political heavyweights -- including the Zimbabwean president -- have publicly announced that they have no intention of honoring court orders if they are not politically acceptable to the ruling party.

Performance Requirements and Incentives

¶12. Several tax breaks are available for new investment by foreign and domestic companies. Capital expenditures on new factories, machinery and improvements are fully deductible and the Government waives import tax and surtax on capital equipment. Other incentives for investors include:

- Investment allowance of 15 percent in the year of purchase of industrial and commercial buildings, staff housing and articles, implements and machinery

- Investment allowance of 50 percent in the year of purchase for training, buildings and equipment

- Twenty-five percent special initial allowance on cost of industrial buildings and commercial buildings and machinery in growth point areas is granted as a rebate for the first four years

- Special mining lease provisions entitle the holder to specific incentive packages to be negotiated with the Ministry of Mines.

- The Government also has provided for the refund of sales taxes (15 percent) for capital goods purchased in Zimbabwe and intended for use in priority projects or investment in growth points.

¶13. Import duties (the reduction of which had been under discussion with both the IMF and the World Bank) and related taxes range up to more than 100 percent. Any investment proposal that involves the employment of expatriates must present a strong case for doing so in order to obtain a work and residence permit. Normally, the maximum contract period for an expatriate is three years, but this will be extended to five years for expatriates with highly specialized skills. Expatriates who have prior permission from the Reserve Bank's exchange control department will be permitted to remit one-third of their salaries. We are aware of several instances since 2003 when the Government has refused to renew the visa of a non-Zimbabwean executive at a subsidiary of a multinational.

¶14. There are no general performance requirements. Official policy, however, especially welcomes investment in enterprises that contribute to rural development, job creation, exports, use of local materials, and transfer of appropriate technology. There are no discriminatory import or export policies affecting foreign firms, although as noted earlier, the Government's approval criteria are heavily weighted toward export-oriented projects, especially from foreign investors.

¶15. Joint ventures are very strongly encouraged. While official policy supports "the maximum Zimbabwean participation" in any new investment project, no specific requirements for local participation have been defined. However, experience has shown that 30 percent local participation is a widely accepted benchmark minimum. Foreign investors are expected to provide for domestic equity participation at or prior to startup, and can expect to be approached early on by a wide range of potential partners, with some Government officials desiring shares at no cost. Companies are expected to make maximum use of Zimbabwean managerial and technical personnel. Subject to Reserve Bank approval, foreign companies are allowed to provide capital equipment as an equity contribution to a joint venture.

¶16. The Government of Zimbabwe's policy calls for Government participation in new investments in "strategic" industries such as energy and mining. The terms of Government participation will be determined on a case-by-case basis. However, the Government's lack of funds (the cause of the dearth of new major investment projects), means that this policy has not been tested in practice for some time.

Right to Private Ownership and Establishment

¶17. Although Zimbabwean law guarantees the right to private ownership, the Government has frequently seized property without due process. Since 2001, the Government has stripped about 4,000 of 4,500 white commercial farmers of their deeded land without compensation. Many of these farmers were foreigners who held Zimbabwe Investment Center certificates and were nationals of countries with which Zimbabwe has signed bilateral investment treaties. In virtually all cases, the Government has ignored these certificates and treaties. There is a lingering threat that the Government could also expropriate property belonging to foreign firms for the purpose of transferring ownership to black Zimbabweans.

Protection of Property Rights

¶18. We cannot emphasize enough the real risk of expropriation. The Government has a strong desire to control as much of the economy as possible. There is little political will to pursue needed reforms such as privatization of state-owned companies, liberalization of foreign exchange policies and removal of price controls from food, staples and energy. The local ownership requirement and the large areas of the economy where foreign investment is not allowed are other hindrances to business establishment and free cross-border capital and equity flows. For private firms,

¶19. Since independence, Zimbabwe has applied international patent and trademark conventions. It is a member of the World Intellectual Property Organization. Generally, the Government seeks to honor intellectual property ownership and rights, although there are serious doubts about its ability to enforce these obligations. The Embassy is not

aware of any grievances over such issues, although pirating of videocassettes and computer software is common. Remittances for royalties, technical services and management fees have been suspended by many companies with overseas ties, due to the severe hard currency shortage.

Transparency of Regulatory System

¶20. The Government has established only a few regulatory bodies. When it resumes its long-dormant privatization program, it is expected to bring more regulatory agencies into being.

¶21. Official policy is to encourage competition within the private sector. The Government claims to be concerned about an "over-concentration" of market clout among a few companies in several industries. However, a greater threat is that many bureaucratic functions in this still heavily controlled economy are not transparent and corruption within the regulatory system is increasingly worrisome. There are, however, still some regulators who generally perform their functions, though their numbers dwindle each year.

Efficient Capital Markets and Portfolio Investment

¶22. New portfolio investment in Zimbabwe has been very limited in recent quarters as the country's macro-economic outlook and fundamentals continue to decline. Zimbabwe's stock market (about 80 companies listed) is small, trading is quite thin, and the public stock float of many of the smaller companies is closely held. In September 1996, the Government opened the stock and money markets to limited foreign portfolio investment. Since then, a maximum of 40 percent of any locally listed company can be foreign-owned with a single investor acquiring a maximum of 10 percent of the shares on offer. Foreign participation in the bond market is restricted to the primary market and only 35 percent of invested capital may be placed in bonds. The equity market is the major opportunity for foreign investors.

¶23. Zimbabwe's financial sector is quite large and well-developed. An impressive variety of financial instruments are traded, though thinly, including debentures, private sector bonds, bankers acceptances, treasury bills, municipal and utility bonds. Two major international commercial banks and a number of regional and domestic banks operate with over 200 branches total. The merchant banks are quite sophisticated and agile. However, the well-publicized failure of a number of financial institutions, primarily due to fraud and inept management, has raised concern over the oversight capability of the Reserve Bank and the financial soundness of a number of the smaller players.

Political Violence

¶24. Since the Government's loss in a February 2000 constitutional referendum, ruling party supporters of the Government have systematically attacked members of the opposition Movement for Democratic Change (MDC) and anyone suspected of supporting them. In the months preceding the June 2000 parliamentary elections and the March 2002 presidential election, the political violence intensified and ruling party supporters, including liberation war veterans and Government-trained militia, perpetrated widespread abuses and killed more than 150 people. Political repression of dissenters, and non-Governmental organizations remains substantial, although the Government seems to have loosened up on media restrictions during 2004 and recorded levels of political violence declined sharply during the year.

Corruption

¶25. According to anecdotal evidence and a survey conducted by Transparency International-Zimbabwe, corruption, already at high and chronic levels, is increasing, especially within the Government. Many companies and the police do not have appropriate tools or skills for investigating and checking the corruption, though the legislative and criminal law framework exists (for example, acceptance of bribes is a criminal offense). Several U.S. firms have protested problems involving major Government tenders and the lack of transparency in the Government tender board's management of the cases. Tenders in the telecommunications, power, defense and aviation sectors have been particularly notorious. Cases involving high or prominent ruling party or Government officials usually do not reach court, regardless of the magnitude or egregiousness of the offense.

¶26. Parliament has adopted a constitutional amendment that provides for the creation of an anti-corruption commission,

however, to date it has not been funded or staffed. The Zimbabwe Republic Police have historically been well disciplined. Recent instances of show that in many Government entities, especially the parastatals, corrupt practices are widespread. Cronyism is also a problem. Under fast-track land reform, the Government has awarded farms in party activists in a non-transparent manner. In the Reserve Bank's twice-weekly currency auctions, firms with close personal ties to the Government often receive foreign exchange at preferential rates.

Bilateral Investment Agreements

¶27. The U.S. has no bilateral investment or trade treaty with Zimbabwe. The country currently has bilateral investment agreements in force with Germany, the United Kingdom, Portugal, Switzerland, Sweden, Malaysia, Mozambique and China. It is negotiating bilateral investment treaties with Italy and the Netherlands. However, commercial farms covered under some of the foregoing treaties remain listed for acquisition under current legislation, thereby denying the owner benefits such as free use and full, market compensation that are covered in these treaties.

OPIC and Other Investment Programs
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¶28. The Government and the U.S. Government concluded an OPIC agreement in April 1999. Zimbabwe acceded to the World Bank's multilateral investment guarantee agency (MIGA) in September 1989. Many major donor countries have suspended their trade finance and export promotion programs, as well as investment coverage, due largely to mounting arrears caused by Zimbabwe's recent difficulty in meeting its foreign debt obligations in a timely manner, as well as the ongoing political crisis. OPIC currently funds a few projects in country.

Labor

¶29. As noted elsewhere in this report, there is a growing shortage of professional, technical and service skills in the workforce, caused primarily by emigration brought about by political and economic crises. Despite this, Zimbabwe still has one of the best-educated labor forces in Africa. Shrinkage of the economy in recent years, and the commercial farm invasions in the same period, have caused formal sector employment to drop fairly precipitously. With at least 300,000 secondary school graduates or dropouts entering the job market every year, the unemployment rate has been steadily rising, and now stands at a minimum of 75 percent. The reduced business activity, declining profitability of companies, surplus labor and hyper-inflationary pressures have caused wage increases to lag far behind inflation. As a consequence, disposable incomes and standards of living have drastically fallen for the majority of the formally employed.

¶30. The country's HIV/AIDS epidemic, with one of the highest infection rates in the world, is also taking a heavy toll on the workforce, with the worst effects of the disease still to come. The Government takes the epidemic seriously and has pursued policies to encourage testing, prevention and care. However, in the short run, the epidemic will almost certainly worsen.

¶31. The Government largely adheres to International Labor Organization conventions protecting worker rights, although it merited a special paragraph in the ILO's annual report designating it as a "notorious country" for its continued attempts to limit workers' right to organize and hold labor union meetings. The 1985 Labor Relations Act sets strict standards for occupational health and safety, but enforcement is fairly lax and not consistent throughout the industrial sectors. In addition, the Government sets a maximum workweek and minimum wage. The workweek averages 40 hours, but can go as high as 60. The law mandates a 24-hour rest period each week. Although minimum wages are ostensibly set by the Government along sectoral lines, in practice there is currently no common policy. Due to the hyper-inflationary situation, each sector negotiates wages that it can afford to pay. Some workers are also provided allowances and expenses for food, transportation, and housing. As already noted, wage increases have lagged far behind the rate of inflation (currently exceeding 300%), causing a critical drop in disposable income and purchasing power.

¶32. One of the most sobering labor developments concerns the displacement of commercial farm workers. Due to the disruptions on commercial farms, there are an estimated 500,000 displaced agricultural workers in Zimbabwe. In addition to having no work and no income, many of these laborers - and their families - now have no home. The ripple affect of this displacement on the economy will continue to be felt for years, as will the accompanying loss in agricultural production.

¶33. Labor relations have become particularly fractious between labor and Government in Zimbabwe since 1997, as economic conditions in the country have deteriorated. They are less so between labor and management. Workers negotiate wages and other benefits with employers during the annual collective bargaining season, which runs from approximately May to July each year. A National Employment Council (NEC) in each industry, comprising representatives from labor, business, and Government, is the vehicle through which the collective bargaining takes place. In addition, the Zimbabwe Congress of Trade Unions (ZCTU), the country's umbrella labor organization, consisting of 35 member unions and approximately 270,000 members, is the traditional advocate for workers to both business and Government. Through both the NEC and the ZCTU, workers in all sectors have demanded repeated salary increases in 2001, 2002, and 2003 to partially compensate for the high inflation and increased cost of living, in some cases striking until their demands were addressed. In almost all industries, employers have approved more than one salary hike per year in response to the inflation rate.

¶34. The Government still maintains an historically paternalistic attitude toward labor, reserving the right to intervene in issues of concern in the workplace. However, the high profile and politicization of the ZCTU in recent years has worked to limit Government's influence over workers. The Government has threatened to eliminate the ZCTU, and has taken steps to marginalize the traditional unions and the formal labor dispute resolution mechanism. Notably, in 2000, groups of "war veterans" - using tactics similar to those adopted in the farm invasions - invaded a number of factories and workplaces, usually claiming to represent the interests of terminated or disciplined workers, but in reality attempting to extort money from management.

¶35. The Government has since then sought to capitalize on war veteran efforts by creating the Zimbabwe Federation of Trade Unions (ZFTU), as an alternative umbrella organization to the ZCTU. However, no one outside of Government or the Government-controlled media sees the ZFTU as a legitimate labor organization, and despite government-backed efforts, it has failed to dislodge the ZCTU as the voice of labor in Zimbabwe. The ZCTU still remains the "official" and internationally recognized labor organization in Zimbabwe.

Foreign-Trade Zones/Free Ports

¶36. At the urging of western donors, the IMF and the World Bank, the Government promulgated legislation appointing an EPZ authority in 1996. Zimbabwe now has many export processing zones, but since January 2004 has generally required that foreign capital comprise a majority of the investment. A trade performance statute requires eligible companies to export at least 80 percent of output, a requirement that has limited foreign investment in the new zones. Other benefits include a five-year tax holiday, duty-free importation of raw materials, no tax liability from capital gains arising from the sale of property forming part of the investment in designated processing zones, and duty-free importation of capital equipment for use in the EPZ.

¶37. Under the original legislation, the provisions of the Labor Relations Act (LRA) do not apply within the zones. However, due to strong advocacy from the labor movement, the Ministry of Public Service, Labor and Social Welfare has entered into discussions with the Ministry of Justice to amend the act so that the LRA will apply.

Foreign Direct Investment Statistics

¶38. Foreign investment has played a crucial role in Zimbabwe's development. However, foreign direct investment in the last three years has all but dried up, as the Government's focus on political objectives at substantial cost to the economy continue and a return to better policies and practices seems no closer. At the end of the 1970's, foreigners owned an estimated 70-80 percent of listed corporations. Today, offshore ownership of shares on the Zimbabwe Stock Exchange has fallen to approximately 25 percent (about 5 percent individuals, the remainder institutional or corporate).

¶39. From independence in 1980 until the introduction of the precursor of the structural adjustment program in 1990, new foreign investment amounted to roughly U.S. $27 million. In the 1990s, by contrast, it reached $400 million/year. A survey conducted by the Confederation of Zimbabwe Industries (CZI) indicated that 25 percent of industrial concerns have some foreign ownership. Because these include many of Zimbabwe's largest companies, they still account for 40-50 percent of industrial output. Estimates of the value of

overall foreign investment run as high as U.S. $5 billion (replacement cost).

Web Resources

¶40. The Zimbabwe Investment Center (ZIC) is authorized to approve proposals involving any foreign investor in any business field. After approval of a project, if foreign staffing or management is desired, the Ministry of Home Affairs through the department of immigration is responsible for the issuance of work permits for expatriate staff. Both initial and renewal issuance of work permits has, at times, proved problematic for foreign companies and investors.

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